

ESTTA Tracking number: **ESTTA589272**

Filing date: **02/25/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Margaritaville Enterprises, LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	256 Worth Ave., Suite Q-R Palm Beach, FL 33480 UNITED STATES		

Attorney information	Joel R. Feldman, Esq. Greenberg Traurig, LLP 3333 Piedmont Rd., NE, Suite 2500 Atlanta, GA 30305 UNITED STATES atltrademark@gtlaw.com, feldmanjoel@gtlaw.com Phone:678-553-4778		
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### Applicant Information

Application No	86042662	Publication date	02/11/2014
Opposition Filing Date	02/25/2014	Opposition Period Ends	03/13/2014
Applicant	Happy Hour Ninja 9656 Reach Rd Potomac, MD 20854 MOLDOVA, REPUBLIC OF		

### Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0  
All goods and services in the class are opposed, namely: Downloadable mobile applications for locating happy hours at bars and restaurants; Downloadable software in the nature of a mobile application for locating happy hours at bars and restaurants

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4125663	Application Date	09/22/2006
Registration Date	04/10/2012	Foreign Priority Date	NONE
Word Mark	IT'S 5 O'CLOCK SOMEWHERE		
Design Mark	<b>IT'S 5 O'CLOCK SOMEWHERE</b>		
Description of	NONE		

Mark	
Goods/Services	Class 043. First use: First Use: 2004/07/12 First Use In Commerce: 2004/07/12 Restaurant and bar services

Attachments	77005179#TMSN.gif( bytes ) Notice of Opposition 1.pdf(290102 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/jrf/
Name	Joel R. Feldman, Esq.
Date	02/25/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 86/042,662: BECAUSE IT'S 4 O'CLOCK  
SOMEWHERE!

Published in the *Official Gazette* on February 11, 2014

_____	)	
<b>MARGARITAVILLE</b>	)	
<b>ENTERPRISES, LLC,</b>	)	
	)	
<b>Opposer,</b>	)	
	)	
<b>v.</b>	)	<b>Opposition No.</b> _____
	)	
<b>HAPPY HOUR NINJA,</b>	)	
	)	
<b>Applicant.</b>	)	
_____	)	

**NOTICE OF OPPOSITION**

Margaritaville Enterprises, LLC ("Margaritaville") opposes Happy Hour Ninja's application for BECAUSE IT'S 4 O'CLOCK SOMEWHERE (the "Application") because Margaritaville will be damaged by the registration of the Application.

The grounds for the opposition are:

**INTRODUCTION**

1. Applicant seeks to register BECAUSE IT'S 4 O'CLOCK SOMEWHERE as a trademark for downloadable mobile applications for locating happy hours at bars and restaurants; downloadable software in the nature of a mobile application for locating happy hours at bars and restaurants in International Class 9 (the "Class 9 Goods").

2. Applicant filed the Application on August 20, 2013, based on an alleged *bona fide* intention to use the mark in commerce.

3. Margaritaville used IT'S FIVE O'CLOCK SOMEWHERE in connection with

restaurant and bar services before August 20, 2013.

### **OPPOSER'S BACKGROUND**

4. Jimmy Buffett is an internationally-famous musician, songwriter, and entertainer.

5. Margaritaville is a Delaware limited liability company with a principal address at 256 Worth Avenue, Suite Q-R, Palm Beach, Florida 33480.

6. Jimmy Buffett is an owner of Margaritaville's parent company, Margaritaville Holdings LLC.

7. Jimmy Buffett commercializes many of his song titles through Margaritaville.

8. Margaritaville is the successor-in-interest to trademarks used and registered by Jimmy Buffett.

### **THE "IT'S FIVE O'CLOCK SOMEWHERE" SONG**

9. In June 2003, Jimmy Buffett and recording artist Alan Jackson released a duet single titled "It's Five O'Clock Somewhere."

10. "It's Five O'Clock Somewhere" spent eight non-consecutive weeks at number one on the *Billboard* Hot Country Songs chart and was *Billboard's* number one country single of the year in 2003.

11. "It's Five O'Clock Somewhere" was recognized by *Billboard* Magazine as the number 3 country song of the decade for 2000-2009.

### **MARGARITAVILLE'S TRADEMARK USE OF IT'S 5 O'CLOCK SOMEWHERE**

12. Shortly after the release of "It's Five O'Clock Somewhere," Margaritaville began using IT'S FIVE O'CLOCK SOMEWHERE as a trademark for souvenir goods sold in Margaritaville retail stores.

13. For nearly ten years, Margaritaville has used the IT'S 5 O'CLOCK

SOMEWHERE mark for restaurant and bar services.

14. Margaritaville owns U.S. Reg. No. 4,125,663 for IT'S 5 O'CLOCK

SOMEWHERE in International Class 43 for restaurant and bar services (TSDR record attached at Exhibit 1).

15. Due to Margaritaville's longstanding and widespread use of the IT'S 5 O'CLOCK SOMEWHERE mark, consumers associate this mark exclusively with Margaritaville and Jimmy Buffett.

### **PRIORITY AND LIKELIHOOD OF CONFUSION**

16. The applied-for mark, BECAUSE IT'S 4 O'CLOCK SOMEWHERE!, closely resembles Margaritaville's IT'S 5 O'CLOCK SOMEWHERE mark.

17. BECAUSE IT'S 4 O'CLOCK SOMEWHERE! and IT'S 5 O'CLOCK SOMEWHERE, which share four words, are similar in appearance.

18. BECAUSE IT'S 4 O'CLOCK SOMEWHERE! and IT'S 5 O'CLOCK SOMEWHERE sound similar.

19. BECAUSE IT'S 4 O'CLOCK SOMEWHERE! and IT'S 5 O'CLOCK SOMEWHERE have a similar commercial impression.

20. Upon information and belief, Applicant adopted its applied-for mark based, in whole or in part, on its similarity to the IT'S 5 O'CLOCK SOMEWHERE mark.

21. Applicant's applied-for Class 9 Goods are closely related to Margaritaville's IT'S 5 O'CLOCK SOMEWHERE-branded restaurant and bar services.

22. Based on the similarity of the marks and the similarity of the goods and services, the public is likely to be confused, to be deceived, and to assume erroneously that Applicant's goods are Margaritaville's goods or that Applicant is in some way connected to, sponsored by, or

affiliated with Margaritaville, resulting in irreparable damage to Margaritaville.

23. Because the public is likely to be confused, to be deceived, and to erroneously assume a connection between Applicant's BECAUSE IT'S 4 O'CLOCK SOMEWHERE!-branded goods and Margaritaville, Applicant's use and registration of its applied-for BECAUSE IT'S 4 O'CLOCK SOMEWHERE! mark will violate 15 U.S.C. §§ 1114 and 1125(a) and will injure and damage Margaritaville and the goodwill and reputation symbolized by Margaritaville's IT'S 5 O'CLOCK SOMEWHERE mark within the meaning of 15 U.S.C. § 1063(a).

24. Applicant's applied-for mark is not registrable under 15 U.S.C. § 1052(d), because it resembles a mark previously used in the United States by another and not abandoned and is therefore likely to cause confusion, mistake, or to deceive.

### **CONCLUSION**

25. Margaritaville requests that the Board sustain this opposition and refuse registration of the Application.

Date: February 25, 2014

Respectfully submitted,  
**GREENBERG TRAURIG, LLP**



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Joel R. Feldman, Esq.  
Kristen L. Fancher, Esq.

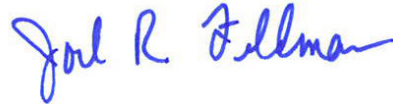
3333 Piedmont Road, NE  
Suite 2500  
Atlanta, Georgia 30305  
(678) 553-4778

**Attorneys for Opposer**  
**Margaritaville Enterprises, LLC**

**CERTIFICATE OF ELECTRONIC TRANSMISSION**

Date: February 25, 2014

I certify that this paper is being transmitted electronically to the Trademark Trial and Appeal Board of the United States Patent & Trademark Office, on the date indicated above, through the ESTTA electronic filing system at the web site <http://estta.uspto.gov/>.



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Joel R. Feldman, Esq.

**CERTIFICATE OF SERVICE**

I certify that on February 25, 2014, I served the above Notice of Opposition by first-class mail to:

David Alexander McWhorter  
9420 Bentrige Avenue  
Potomoc, MD 20854-2888



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Joel R. Feldman, Esq.

# Exhibit 1



## STATUS DOCUMENTS

[Back to Search](#)[Print](#)**Generated on:** This page was generated by TSDR on 2014-02-25 15:40:53 EST**Mark:** IT'S 5 O'CLOCK SOMEWHERE

IT'S 5 O'CLOCK SOMEWHERE

**US Serial Number:** 77005179**Application Filing Date:** Sep. 22, 2006**US Registration Number:** 4125663**Registration Date:** Apr. 10, 2012**Register:** Principal**Mark Type:** Service Mark**Status:** Registered. The registration date is used to determine when post-registration maintenance documents are due.**Status Date:** Apr. 10, 2012**Publication Date:** Jan. 18, 2011**Notice of Allowance Date:** Dec. 06, 2011

## Mark Information

**Mark Literal Elements:** IT'S 5 O'CLOCK SOMEWHERE**Standard Character Claim:** Yes. The mark consists of standard characters without claim to any particular font style, size, or color.**Mark Drawing Type:** 4 - STANDARD CHARACTER MARK

## Goods and Services

**Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks \*.\* identify additional (new) wording in the goods/services.

**For:** Restaurant and bar services**International Class(es):** 043 - Primary Class**U.S Class(es):** 100, 101**Class Status:** ACTIVE**Basis:** 1(a)**First Use:** Jul. 12, 2004**Use in Commerce:** Jul. 12, 2004

## Basis Information (Case Level)

**Filed Use:** No**Currently Use:** Yes**Amended Use:** No**Filed ITU:** Yes**Currently ITU:** No**Amended ITU:** No**Filed 44D:** No**Currently 44D:** No**Amended 44D:** No**Filed 44E:** No**Currently 44E:** No**Amended 44E:** No**Filed 66A:** No**Currently 66A:** No**Filed No Basis:** No**Currently No Basis:** No

## Current Owner(s) Information

**Owner Name:** MARGARITAVILLE ENTERPRISES, LLC**Owner Address:** 256 WORTH AVENUE, SUITE Q-R  
PALM BEACH, FLORIDA 33480  
UNITED STATES**Legal Entity Type:** LIMITED LIABILITY COMPANY**State or Country Where  
Organized:** DELAWARE

## Attorney/Correspondence Information

**Attorney of Record****Attorney Name:** Robert A. Rosenbloum and Kristen L. Fancher**Docket Number:** 32777.057000

Attorney Primary Email [atltrademark@gtlaw.com](mailto:atltrademark@gtlaw.com)

Attorney Email Authorized: No

Address:

## Correspondent

**Correspondent** Jeffrey M. Smith, Esq. and Kristen L. Fancher, Esq**Name/Address:** GREENBERG TRAURIG, LLP  
3333 Piedmont Road NE, Suite 2500  
ATLANTA, GEORGIA 30305  
UNITED STATES**Phone:** 678-553-2100**Fax:** 678-553-2212**Correspondent e-mail:** [atltrademark@gtlaw.com](mailto:atltrademark@gtlaw.com)**Correspondent e-mail** Yes**Authorized:**

Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
May 21, 2012	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Apr. 10, 2012	REGISTERED-PRINCIPAL REGISTER	
Mar. 08, 2012	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Mar. 07, 2012	LAW OFFICE REGISTRATION REVIEW COMPLETED	70884
Mar. 05, 2012	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Feb. 14, 2012	STATEMENT OF USE PROCESSING COMPLETE	65362
Jan. 17, 2012	USE AMENDMENT FILED	65362
Feb. 13, 2012	CASE ASSIGNED TO INTENT TO USE PARALEGAL	65362
Jan. 17, 2012	TEAS STATEMENT OF USE RECEIVED	
Dec. 06, 2011	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Oct. 24, 2011	TTAB RELEASE CASE TO TRADEMARKS	198215
Oct. 24, 2011	OPPOSITION TERMINATED NO. 999999	198215
Oct. 24, 2011	OPPOSITION DISMISSED NO. 999999	198215
Aug. 08, 2011	ASSIGNED TO EXAMINER	74671
Jan. 18, 2011	OPPOSITION INSTITUTED NO. 999999	198215
Jan. 18, 2011	OPPOSITION PAPERS RECEIVED AT TTAB	
Jan. 18, 2011	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jan. 18, 2011	PUBLISHED FOR OPPOSITION	
Dec. 13, 2010	LAW OFFICE PUBLICATION REVIEW COMPLETED	70884
Dec. 13, 2010	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 08, 2010	LIE CHECKED SUSP - TO ATTY FOR ACTION	70884
Jun. 04, 2010	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	70884
Jun. 04, 2010	ASSIGNED TO LIE	70884
Nov. 27, 2009	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	77075
May 26, 2009	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	77075
Nov. 24, 2008	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	77075
May 20, 2008	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	77075
Nov. 19, 2007	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	77075

May 17, 2007	REPORT COMPLETED SUSPENSION CHECK CASE STILL 77075 SUSPENDED	
May 17, 2007	ASSIGNED TO LIE	77075
Jan. 17, 2007	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Jan. 10, 2007	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Nov. 08, 2006	LETTER OF SUSPENSION E-MAILED	6332
Nov. 08, 2006	SUSPENSION LETTER WRITTEN	74812
Nov. 08, 2006	ASSIGNED TO EXAMINER	74812
Sep. 28, 2006	NOTICE OF PSEUDO MARK MAILED	
Sep. 27, 2006	NEW APPLICATION ENTERED IN TRAM	

## TM Staff and Location Information

### TM Staff Information - None

#### File Location

**Current Location:** PUBLICATION AND ISSUE SECTION

**Date in Location:** Mar. 07, 2012

## Assignment Abstract Of Title Information

### Summary

[Conveyance Filter](#)

**Total Assignments:** 3

**Registrant:** MARGARITAVILLE ENTERPRISES, LLC

### Assignment 1 of 3

**Conveyance:** SECURITY INTEREST

**Reel/Frame:** [3471/0100](#)

**Pages:** 70

**Date Recorded:** Jan. 30, 2007

**Supporting Documents:** [assignment-tm-3471-0100.pdf](#)

#### Assignor

**Name:** [MARGARITAVILLE ENTERPRISES, LLC](#)

**Execution Date:** Dec. 20, 2006

**Legal Entity Type:** LIMITED LIABILITY COMPANY

**State or Country Where  
Organized:** No Place Where Organized Found

#### Assignee

**Name:** [GUGGENHEIM CORPORATE FUNDING, LLC](#)

**Legal Entity Type:** LIMITED LIABILITY COMPANY

**State or Country Where  
Organized:** No Place Where Organized Found

**Address:** 135 EAST 57TH STREET  
NEW YORK, NEW YORK 10022

#### Correspondent

**Correspondent Name:** WEIL, GOTSHAL & MANGES C/O JULIO GURDIAN

**Correspondent Address:** 767 5TH AVENUE  
NEW YORK, NY 10153

#### Domestic Representative - Not Found

### Assignment 2 of 3

**Conveyance:** ASSIGNS THE ENTIRE INTEREST

**Reel/Frame:** [3458/0516](#)

**Pages:** 20

**Date Recorded:** Jan. 10, 2007

**Supporting Documents:** [assignment-tm-3458-0516.pdf](#)

#### Assignor

**Name:** [BUFFETT, JIMMY](#)

**Execution Date:** Jan. 03, 2007

**Legal Entity Type:** INDIVIDUAL**Citizenship:** UNITED STATES**Assignee****Name:** [JB INTELLECTUAL PROPERTY, LLC](#)**Legal Entity Type:** LIMITED LIABILITY COMPANY**State or Country Where  
Organized:** DELAWARE**Address:** 256 WORTH AVENUE, SUITE Q-R  
PALM BEACH, FLORIDA 33480**Correspondent****Correspondent Name:** KRISTEN L. FANCHER, ESQ.**Correspondent Address:** 3290 NORTHSIDE PARKWAY, SUITE 400  
ATLANTA, GA 30327**Domestic Representative - Not Found****Assignment 3 of 3****Conveyance:** ASSIGNS THE ENTIRE INTEREST**Reel/Frame:** [3460/0384](#)**Pages:** 20**Date Recorded:** Jan. 12, 2007**Supporting Documents:** [assignment-tm-3460-0384.pdf](#)**Assignor****Name:** [JB INTELLECTUAL PROPERTY, LLC](#)**Execution Date:** Jan. 03, 2007**Legal Entity Type:** LIMITED LIABILITY COMPANY**State or Country Where  
Organized:** DELAWARE**Assignee****Name:** [MARGARITAVILLE ENTERPRISES, LLC](#)**Legal Entity Type:** LIMITED LIABILITY COMPANY**State or Country Where  
Organized:** DELAWARE**Address:** 256 WORTH AVENUE, SUITE Q-R  
PALM BEACH, FLORIDA 33480**Correspondent****Correspondent Name:** KRISTEN L. FANCHER, ESQ.**Correspondent Address:** 3290 NORTHSIDE PARKWAY, SUITE 400  
ATLANTA, GA 30327**Domestic Representative - Not Found****[Proceedings](#)**